

Lima Register Company and United Independent Workers, Local No. 48 a/w National Federation of Independent Unions. Case 8-CA-14538

March 30, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on January 14, 1981, by United Independent Workers, Local No. 48 a/w National Federation of Independent Unions, herein called the Union, and duly served on Lima Register Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 8, issued a complaint and notice of hearing on February 24, 1981, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Respondent filed an answer to the complaint on March 6, 1981, denying commission of unfair labor practices and raising affirmative defenses.

On July 1, 1981, the Acting Regional Director for Region 8 issued an amendment to the complaint and on July 10, 1981, Respondent filed an answer to the amendment to the complaint.

On December 21, 1981, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 30, 1981, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent failed to respond to the notice.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

FINDINGS OF FACT¹

I. THE BUSINESS OF RESPONDENT

Lima Register Company, a division of Lennox Industries, Inc., an Iowa corporation, produces air conditioning and heating registers at its facility at 1150 North Cable Road, Lima, Ohio. Annually in the course and conduct of its business it ships goods valued in excess of \$50,000 directly to points located outside the State of Ohio.

¹ The following findings of fact, secs. I, II, and III, are based on allegations in the complaint which were admitted by Respondent.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

United Independent Workers, Local No. 48 a/w National Federation of Independent Unions, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The complaint alleges that Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally discontinuing a longstanding practice of giving Christmas hams to all unit employees.

Respondent produces air conditioning and heating registers at its Lima, Ohio, facility. Since 1945, the Union has been the exclusive collective-bargaining representative of Respondent's employees in the following appropriate unit:

All employees of the Lima Register Company except supervisory, engineers, office personnel, guards and watchmen.

Since 1945, Respondent and the Union have engaged in collective bargaining with respect to rates of pay, wages, hours of employment, and others terms and conditions of employment concerning the employees in the unit, and have entered into a series of collective-bargaining agreements, the most recent of which is and has been in full force and effect from October 1, 1980, to on or about October 1, 1983. This agreement was in effect at all times material.

From 1972 until 1979 Respondent had given a Christmas ham to each of its employees. This practice was discontinued in 1980 without affording the Union any opportunity to negotiate the loss of benefit.

Respondent in its answer to the complaint acknowledges that it discontinued the Christmas ham benefit without prior discussion but offers two affirmative defenses. It argues, first, that it discussed the economic basis for its decision with the Union after it discontinued the Christmas ham bonus. Second, Respondent contends that it had no bargaining obligation concerning the benefit as its original decision to provide the hams was a unilateral one and not the product of negotiations.

An employer violates its duty to bargain when it institutes changes in terms and conditions of em-

ployment without first informing the union.² Here, the Christmas ham, consistently distributed for 8 years, is a component of wages or terms of employment, even though not expressly provided by the bargaining agreement. Such a practice cannot be discontinued without providing the Union with an opportunity to bargain unless the Union has waived its right to bargain over the matter.³ Respondent does not contend there was a waiver, and Respondent's discussion with the Union, coming after the benefit was discontinued, does not satisfy its obligation to bargain.⁴ Accordingly, we find that Respondent violated Section 8(a)(5) and (1) of the Act when it unilaterally discontinued its practice of providing Christmas hams to the unit employees, and we grant the General Counsel's Motion for Summary Judgment.

CONCLUSIONS OF LAW

1. Lima Register Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Independent Workers, Local No. 48 a/w National Federation of Independent Unions, is a labor organization within the meaning of Section 2(5) of the Act.

3. All employees of Lima Register Company, except supervisory, engineers, office personnel, guards and watchmen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since 1945, the Union has been and now is the exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining.

5. Respondent and the Union have at all material times been parties to a collective-bargaining agreement covering the employees in the above-described unit.

6. By unilaterally, without notification to or consultation with the Union, discontinuing its established practice of giving to each employee in the above unit a ham shortly before Christmas, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

7. By its refusal to bargain Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and

is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit concerning the Christmas ham bonus. As Respondent's unfair labor practice consists of unilaterally discontinuing giving its unit employees Christmas hams, a bonus constituting an established benefit of employment, we shall order Respondent to make the employees whole for the loss of benefits due them by paying them the value of the lost benefits with interest to be computed in the manner set forth in *Florida Steel Corporation*, 231 NLRB 651 (1977).⁵ Further, as Respondent has unilaterally and unlawfully rescinded a benefit of unit employees, we shall order Respondent to reinstate its practice of giving unit employees the Christmas ham bonus.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Lima Register Company, Lima, Ohio, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Unilaterally, without notification to or bargaining with United Independent Workers, Local No. 48 a/w National Federation of Independent Unions, discontinuing its past practice of giving annually to each of its unit employees a Christmas ham.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named Union as the exclusive representative of all employees in the aforesaid appropriate unit with respect to any change in the practice of giving the Christmas ham bonus to unit employees.

² *N.L.R.B. v. Benne Katz, Alfred Finkel, and Murray Katz, d/b/a Williamsburg Steel Products Company*, 369 U.S. 736 (1962).

³ *Nello Pistori & Sons, Inc. (S & D Trucking Co.)*, 203 NLRB 905 (1973).

⁴ *Aeronca, Inc.*, 253 NLRB 261 (1980); *Gas Machinery Company*, 221 NLRB 862 (1975).

⁵ See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

(b) Make whole its unit employees, with interest, for any losses they may have suffered by Respondent's unilateral discontinuance of the Christmas ham bonus, in the manner set forth in the section of this Decision entitled "The Remedy."

(c) Reinstate the Christmas ham bonus for unit employees.

(d) Post at its facility in Lima, Ohio, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 8, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for Region 8, in writing, within 20 days from the date of this Order, what steps Respondent taken to comply herewith.

⁶ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT refuse to bargain with United Independent Workers, Local No. 48 a/w National Federation of Independent Unions, by unilaterally, without notification to or consultation with the Union, discontinuing our past practice of giving Christmas hams to unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their rights mentioned above.

WE WILL, upon request, bargain with the above-named Union with respect to the practice of giving Christmas hams to unit employees.

WE WILL make unit employees whole by paying them the value of lost Christmas ham bonuses with interest.

WE WILL reinstate the Christmas ham bonus for unit employees. The following employees constitute the appropriate unit:

All employees employed by us except supervisory, engineers, office personnel, guards and watchmen.

LIMA REGISTER COMPANY